

Charter Review & Revision Board

Members: Appointed by:

Stephen Zack, Esq., Chair Mayor Matti Herrera Bower Participated via telephone Aaron Perry, Vice Chair Commissioner Jerry Libbin Commissioner Jorge R. Exposito Scott Diffenderfer Commissioner Michael Góngora Participated via telephone Jacqueline Lalonde

Commissioner Edward L. Tobin Rick Kendle Alex Fernandez Commissioner Deede Weithorn Richard "Rick" J. Preira

Commissioner Jonah Wolfson Absent

Staff:

Jose Smith, City Attorney Debora Turner, First Assistant City Attorney Gary M. Held, First Assistant City Attorney Donald Papy, Chief Deputy City Attorney Rafael E. Granado, City Clerk Liliam Hatfield, OAV, City Clerk's Office

Absent

Minutes

Wednesday, December 4, 2013 at 4:30 p.m. Commission Chambers, 3rd Floor, City Hall Email: CharterReview@miamibeachfl.gov

The meeting was called to order by Vice-Chair Perry at 4:50:58 p.m.

Roll call made: Member Preira is absent; Chair Zack and Member Lalonde are attending via telephone.

Accept Minutes Of The November 20, 2013 Charter Review & Revision Board Meeting.

ACTION: Motion made by Member Fernandez to approve the minutes as amended: seconded by Member Diffenderfer; 4-0; Absent: Member Preira. Chair Zack and Member Lalonde participated via telephone, but did not vote.

Amendments:

1) Page 6:

Member Fernandez amended last paragraph to read:

Member Fernandez explained that Ms. Malakoff was a Board of Adjustment Land use member

2) Page 8;

Item 9, third paragraph:

Item to be placed for discussion on December 2013, instead of 2014

3) Chair Zack amended the sentence:

Chair Zack is present via telephone and thus unable to vote to read:

Chair Zack is present via telephone and participated, but did not vote throughout the minutes.

4) Page 4 a., seventh paragraph

Chair Zack amended the paragraph to read:

Chair Zack stated that he shares the same concerns and this is a question raised around the country today; however, he is against the idea of bringing this question to <u>any</u> particular group the newly-elected officials.

5. Page 7, Item 8 delete last paragraph.

2. Discuss Report To City Commission At December 11, 2013 Commission Meeting, Regarding Recommended Charter Amendments.

Chair Zack will speak to Rafael E. Granado, City Clerk regarding the item. He requested a list of items discussed by the Board for recommendation to the City Commission, a Time Certain, as well as a list of presenters during CRB meetings held.

Discussion held.

Vice-Chair Perry requested the City Clerk to send the Commission Memorandum electronically to CRB members. **Rafael E. Granado to handle.**

Debora Turner stated that the recommendations to the Bill of Rights will be added and regarding Sec. 2.04 – Induction And Meeting, this item has been removed.

Vice-Chair Perry suggested that any recommendations from the CRB members regarding the December 11, 2013 presentation be emailed as soon as possible to Mr. Granado.

3. Discussion Of Pensionable Benefits For Elected Officials –Don Papy to present.

ACTION:

Donald Papy, Chief Deputy City Attorney, spoke with the City's Pension Counsel last week, and explained to him what the issue was about, how the Pension ordinance is worded, and about the ambiguity of what was included in the Pension ordinance. It was explained to Counsel that the CRB had recommended his opinion as far as amending the Charter. The Pension Counsel's recommendation was not to make any change in the Charter since it is in the Pension Ordinance, it could be addressed there. He did not give a written opinion nor was he asked for one.

MOTION:

Member Kendle suggested recommending this item to the City Commission to clarify the Pension Ordinance, so that is transparent and defines in detail what is pensionable for Commissioners, City Attorney and City Manager; seconded by Member Fernandez; Voicevote: 4-0. Absent: Chair Zack and Members Lalonde and Preira.

Discussion held.

- 4. Discussion Of Miami Beach United's (MBU) Proposed Amendment To The Bill Of Rights Enforcement Issue. Mark Needle.
 - a. Ethics In Government; and
 - b. Remedies For Violations

ACTION:

The following individuals spoke in support of the proposed amendments and explained language revisions:

Terry Bienstock Mark Needle Nancy Liebman

Discussion held regarding refinement of language, in specific, words such as substantial, reasonable and promptly, which have no definition.

Gary Held, First Assistant City Attorney, explained that this is the proposal of Miami Beach United. On some paragraphs the Legal Department provided a caveat, i.e., in the **Right to Notice**, <u>Failure to provide or post copies as provided herein shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing.</u> He suggested adding the same language in this paragraph to clarify that actions or interpretations may or taken should not void an action.

Discussion continued regarding process.

Chair Zack stated that the document contains numerous items that are not clearly defined, and the City Commission does not need to discuss items that are not clear. If you make it permissive to put it on the agenda, based on the City Manager's decision, and not mandatory, that would resolve some of the issues. There is no definition that would help interpret who is the "affected person." He is concerned about the Right to Examine Witnesses." He suggested a Right to Submit Questions to Witnesses to accomplish that.

Mark Needle explained that they reached a resolution to make the entire process oriented in a way to create standards and practice of good government throughout the process, and to make all remedies forward looking, not "backward" looking.

Discussion continued.

MOTION:

Chair Zack made a motion to amend (A) 6. Remedies of Violations

✓ Instead of mandatory placement on the Agenda, it shall be a <u>discretionary placement</u>

Discussion continued.

Richard Lorber, Acting Planning Director, spoke.

Gary Held, First Assistant City Attorney, explained that this is an aspirational document; if there were deadlines, it would be part of an ordinance. They are trying to set general aspirational goals in the nature of a constitution and have it implemented through some more detailed legislation at a later point.

Discussion continued.

Gary Held, First Assistant City Attorney, stated that language can be added to clarify that this is not being used as a vehicle for an adjudication of a possible error or mistake in the processing of any particular application, but there would be a prospective change in policy as a result of any action, complaint or violation. Discussion continued.

He suggested adding under (C) Remedies for violations:

Notwithstanding other remedies, any resident alleging a violation of this Bill of Rights may submit allegations of violations in writing to the City Clerk, who shall refer the matter to the City Manager to resolve administratively through a prospective change in policy.

Chair Zack suggested changing "shall" to "may."

Discussion continued.

Mark Needle believes that the City Commission needs to see, and the residents have the right to have them see, violations that happen; those should go to Commission on the Consent Agenda, and it is up to the residents to lobby to get them pulled from the Consent Agenda and addressed at Public Hearings, but they need to move forward to the Commission. On the proviso offered by Mr. Held, he would add the words "Administrative practices."

Discussion continued.

Member Kendle stated that he cannot support adding this in the Bill of Rights.

Former Commissioner Nancy Liebman spoke in support of placing the Miami Beach United language in the Bill of Rights. They have met numerous times with staff. She has been a 30-year activist and wants to preserve the progress that has been made. This is about resident's rights. If there is a rule out of order, a rule is out of order. She believes that Mr. Held would have stopped them if they were not doing the right thing. She does not understand why this is being challenged.

Chair Zack explained how the Charter was reviewed in the 1990s, and disagrees that there is a lot of confusion in the Charter as it exists. He expressed his disapproval. Beyond that, a few words can make all the difference in the world, and he does not think they should present a document that is flawed. Discussion continued.

Vice-Chair Perry commended MBU for their hard work and efforts; they have supported this all the way through, and it sounds to him like they are in favor, but there needs to be a change in language. So the question becomes, can they get to the finish line today with adjustment of the wording.

Chair Zack stated that the document needs to be polished; he believes in the principle, but the first rule is to do no harm, and he is concerned about the harm that can be done by the lack of specificity.

Mr. Held explained that since there is time to work out the language to place on the ballot, there is opportunity to fine-tune the language.

Mark Needle asked for continuance of discussion on this item, even if the CRB is disbanded.

MOTION

Motion made by Member Kendle to continue with this discussion whether it is this committee or a new committee, and if unable to do so, to discuss at a public workshop.

FINAL MOTION:

Motion by Member Kendle; seconded by Member Fernandez to approve the aspirations contained herein, and recommended continuing the debate with members of the Charter Review Board or at a Public Workshop, as designated by the City Commission. Voicevote: 4-0. Chair Zack and Member Lalonde participated in the discussion, but did not vote.

Handout or Reference Materials:

- 1. MBU Proposed Amendments
- 5. Bill of Rights Provision Ethics in Government: Discussion Of Including A Provision In The Bill Of Rights Section That Prohibits Any Elected, Appointed Official Or Employee Of The City From Using Their Position For Personal Benefit. Debora Turner to present.

ACTION:

Chair Zack stated that the Charter should include language stating that no official of the City, elected, appointed or employed, should use their office for personal benefit.

Debora Turner, First Assistant City Attorney, distributed copies of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, and explained proposed language to add to this provision.

County Code Section 2-11.1. Conflict of Interest and Code of Ethics Ordinance.

(g) Exploitation of official position. No person included in the terms defined in subsection (b)(1) through (6) and (b) (13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

Florida State Statutes

Section 112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.

(6) MISUSE OF PUBLIC POSITION – No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

Ms. Turner proposed read a sentence that may encapsulate those two provisions to amend Paragraph 18 of the Bill of Rights:

"No City of Miami Beach official or employee shall use or attempt to use his or her official position to unlawfully secure special privileges, benefits or exemptions for himself, herself or others."

Discussion held.

Chair Zack suggested adding any elected, appointed official, or employee of the City shall not use his or her official position for personal benefit or for the benefit of others.

Discussion continued and Member Kendle suggested adding the word "corruptly" as it is used in the State Statutes.

Debora Turner, First Assistant City Attorney, read the final motion:

FINAL MOTION:

Motion by Chair Zack; seconded by Member Fernandez to approve language to read: "No City of Miami Beach elected or appointed official or employee, shall use or attempt to use his or her official position to <u>corruptly</u> or unlawfully secure special privileges, benefits, or exemptions for himself, herself or others." Voice-vote: 4-0. Chair Zack participated in the discussion via the telephone but did not vote. Absent: Members Lalonde and Preira.

NEW BUSINESS

There was consensus that CRB debates try to be apolitical. Mr. Kendle stated that his main concern was the Inspector General, but he will wait to see what the City Commission does.

ADDENDUM

Member Fernandez asked Ms. Turner if he should vote on this issue regarding Powers and Functions of City Manager. His questions are about appointing.

Member Kendle stated that if someone works for the Commission, does the Commissioner appoint that individual or the Mayor. Is the City Charter clear on that? Is the Commission part of the Mayor's Office or separate?

Don Papy, Chief Deputy City Attorney, stated that because of Member Fernandez's situation, it is recommended that this be deferred.

Vice-Chair Perry, with that recommendation, reiterated their desire to stay apolitical, and stated that it would be in the interest of the board not to discuss this item. He gave Alex the floor.

Member Fernandez suggested that if this Board continues to serve, to look at Section "Authority to Appoint," for Commissioner's staff. If there were future meetings, he would encourage them to look at it.

Meeting adjourned at 6:23:21 p.m.